

Internal Revenue Service
District Director

NO PROTEST RECEIVED. CASE CLOSED TO
ESP. [REDACTED] EO REVIEWER 4/22/96.
Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

[REDACTED]
Telephone Number
[REDACTED]

Refer Reply to:

EP/EO

Employer Identification Number:
[REDACTED]

Date: MAR 06 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the

2/28/96

3/5/96

3/9/96

[REDACTED]

Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]
District Director

Enclosures: 3

Enclosure I

[REDACTED]

[REDACTED] was incorporated in the State of [REDACTED] on [REDACTED].

Your Articles of Incorporation state that your organization is formed exclusively for charitable purposes.

Your Articles of Incorporation provides that your organization is organized upon a stock basis. The sole shareholders are [REDACTED] and [REDACTED].

The purpose of [REDACTED] ([REDACTED]) is to help make funds available to any and all individuals who are 18 years of age or less to enable them to participate in an organized athletic competition or activity. Qualified individuals approach [REDACTED], either individually or in groups, and make a written request for financial aid. This financial aid would be used for the payment of athletic participation fees or the purchase of athletic equipment. [REDACTED]'s main funding source will be the specific fundraising activities designed to meet the applicant's request. [REDACTED] will solicit the general public for donations not specifically earmarked for the benefit of any particular applicant, but these efforts will be minimal as compared to the fundraising that will be instituted in order to meet a specific applicant's goal. [REDACTED] will use the efforts of the applicants and their parents in raising the needed funds.

Funds raised are distributed directly to the athletic organization or equipment supplier identified by the applicant.

[REDACTED] and [REDACTED], in addition to being Directors, Officers and the sole shareholders of [REDACTED], are also the Directors, Officers, and sole shareholders of a for-profit organization known as [REDACTED]. This corporation is involved in the teaching and instructing of the martial arts to individuals of all ages, as well as retailing martial arts equipment to be used in this instruction. [REDACTED] has an enrollment on average between [REDACTED] to [REDACTED] students who are 18 years of age or less. Eligible individuals participating in the [REDACTED] program, as well as other individuals not participating in the [REDACTED] program, will approach [REDACTED] for financial assistance in obtaining membership fees and/or equipment costs.

Your organization's income will consist of approximately \$[REDACTED] from fundraising activities in [REDACTED] and \$[REDACTED] from fundraising activities in [REDACTED].

Expenses of your organization include payments on behalf of qualified applicants and amounts distributed to 501(c)(3) organizations. These payments will amount to approximately \$[REDACTED] in [REDACTED] and [REDACTED] in [REDACTED]. You will also incur fundraising expenses for these years.

Enclosure I continued

[REDACTED]

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(2) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of private interests, such as shareholders of the organization or designated individuals.

In International Postgraduate Medical Foundation v. Comm., TCM 1989-36, the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a non-profit corporation that conducted continuing medical educational tours. Michael Helin, trustee and executive director of the non-profit corporation, was also a shareholder and president of H & C Tours, a travel agency. The Foundation used H & C Tours exclusively for all travel arrangements. The Foundation did not solicit competitive bids from any entity other than H & C Tours. In holding the Foundation not to be exempt, the Court stated:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

Your organization is similar to the one in International Postgraduate, supra. Students of [REDACTED] will approach [REDACTED] for funds to enable them to participate in [REDACTED]'s activities. Since [REDACTED] and [REDACTED] are on the board of directors and also the sole shareholders of both the for-profit organization ([REDACTED]) and the non-profit organization ([REDACTED]), they stand to benefit financially from the operation of [REDACTED]. The benefits to [REDACTED], and through [REDACTED] to [REDACTED] and [REDACTED], constitute private benefits and inurement in

Enclosure I continued



violation of section 1.501(c)(3)-1(c)(2) of the Regulations. Thus, your organization is not operated exclusively for exempt purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the Regulations and you do not qualify for exemption under section 501(c)(3) of the Code.